IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Recall Application No. 398 of 2007
IN
Election Petition No. 07 of 2007.

Rajeev Gupta, S/O late Sri Bharat Bhushan Gupta, 9/4 Mahant Quarters, Idgah, Police Station Cantt. Dehradun.
(Applicant)

... Petitioner.

Vs.

1. Union of India through Cabinet Secretary (Govt. Of India) Rashtrapati Bhawan, New Delhi.
2. Election Commission of India through Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi.
3. Uttarakhand State Election Commission through Secretary Election, Uttarakhand Secretariat, Subhash Road, Dehradun.
4. Chief Election Officer, Uttarakhand, Secretariat Uttarakhand, Subhash Road, Dehradun.
5. District Election Officer, District Magistrate, Dehradun, D.M. Office, Court Compound, Dehradun.
6. Returning Officer, Uttarakhand Legislative Assembly Constituency- Dehradun-14, S.D.M. (Sadar), Collectorate, Dehradun.
7. Sri Harbans Kapoor S/O late Sri Sohanlal Kapoor, 41, Khurbura Mohalla, P.S. Kotwali Dehradun.
8. Sri Lal Chand Sharma S/O Sri Khairati Lal, 4-C Naishvilla Road Dehradun.
9. Sri Virendra Uniyal, S/O Sri A.P.Uniyal, 36, Ram Vihar, Ballupur Road, Dehradun.
10. Sri Amit Jain, S/O Sri Birbal Prasad, 94, Tilak Road, Dehradun.
11. Sri Shiv Kumar Agarwal, Son of late Sri Chunni Lal Village Kaulagarh, Dehradun.
12. Sri Gurdeep Singh Toni, S/O Sri Kartar Singh, 1/7 Haridwar Road, Dehradun.
13. Sri Shyam Sunder Yadav, S/O Sri D.P.Yadav, 265 Doon Vihar, Jakhan Bhagirathipuram, Rajpur Road, Dehradun.
14. Sri Pankaj Kukreti, S/O Sri Radhakrishna Kukreti, Naya Jamana Press, 15-A, Kutchery Road, Dehradun.
15. Sri Ritesh Sachdeva, S/O Kapil Dev Sachdeva, No. 3 Shanti Vihar, Gobind Garh, Dehradun.
16. Rishipal Sharma, S/O late Sri Kapoori Lal, 208/162 Block I Khurbura Mohalla, Dehradun.
17. Khushal Singh Bhandari, S/O Sri Chohad Singh, House No. 66, New Colony, Ballupur, Dehradun.
18. Dharmendra Teetu, S/O late Sri K.Singh, House No. 159, Rajiv Gandhi Colony, Gobind Garh, Dehradun.
19. Sardar Ahmad Khan, s/O late Sri Ameer Ahmad, R/O D.S.Negi Colony, Tarla Aamwala, village Nanoorkhera, Dehradun.

...O.P.-**Respondents.**

Date May 10, 2007.

P.C.: <u>Hon'ble B.S.Verma, J.</u>

Heard Sri N.C.Gupta, learned counsel for the applicant-petitioner on recall application at length and perused the record.

This application for recall of order dated 13-4-2007 has been filed by the applicant-petitioner, whereby this Court has dismissed Election Petition No. 07 if 2007. The application is supported by an affidavit sworn in by the petitioner. This Court has dismissed the election petition by a detailed order because there was non-compliance of Section 81(1) and Section 117 of the Representation of People Act, 1951 ***(for short the Act).*** The order was passed to the following effect:-

"Thus, in view of the above facts and circumstances, it is clear that under Section 81(1) of the Act, an election petition calling in question any election has to be presented by any candidate himself and under Rule 3 of the High Court Rules, the same has to be presented before the Registrar General of this Court. But in the instant case, as mentioned earlier, the election petition was received by speed post, the petitioner has not turned up to present the petition himself before the Registrar General and even today none is present before the Court when the election petition is listed before me and as there is non-compliance of Section 117 of the Act, therefore, there is no option before this Court but to dismiss the election petition at the threshold.

The election petition, therefore, is liable to be dismissed and is hereby dismissed under sub-section (1) of Section 86 of the Representation of the Peoples Act, 1951.

The grounds raised for recall of the dismissal order in the affidavit are that the election petition was defective and the petitioner

is ready and willing to remove the defects. I am not inclined to accept the contention of the applicant for the following reasons:-

Firstly, this election petition was not presented by the applicant before the Registrar General in person, rather it was received in the Registry of the Court by speed post. The present petition was not presented in accordance with Section 81(1) of the Act. It was the statutory requirement of law that the election petition should have been presented by the petitioner in person. If the election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, the same has to be dismissed outright. In the case of ***Satya Narain Vs. Dhuja Ram and others (AIR, 1974, Supreme Court, Page 1185]***, it has been held by the Apex Court that an election petition cannot be equated with a plaint in a civil suit. Moreover, the Apex Court in the case of ***Chandra Kishore Jha Vs. Mahavir Prasad and others [(1999) 8 S.C.C., Page 266 =JT 1999(7) SC 256]*** has observed that where a statute provides a thing to be done in particular manner, then it has to be done in that manner and in no other manner. Since the election petition in the instant case was not presented as required under Section 81(1) of the Act read with Rule 3 of the Chapter XV-A of the High Court Rules, therefore, it is no more open to the petitioner to fill up the lacuna, which is not curable at this stage.

Secondly, non-compliance of Section 117 of the Act is equally fatal to the case of the applicant-petitioner. The petitioner failed to deposit in the High Court a sum of two thousand rupees as security for costs at the time of presentation of election petition. It has been held by the Apex Court in the case of ***Charan Lal Sahu Vs. Nandkishore Bhatt and others [AIR 1973 Supreme Court, Page 2464]*** that in the event of non-deposit of security along with election petition as required by Section 117, the High Court has no option but to reject the election petition.

Thirdly, the election petition was dismissed on merits in view of the non-compliance of statutory provisions of the Act as

detailed in the impugned order dated 13-4-2007. Therefore, there is no scope for the petitioner to get non-compliance of statute cured by way of the present recall application. It would suffice to mention that non-presentation of the election petition in accordance with law and the Rules coupled with non-compliance of Section 117 of the Act is not a mere defect to be curable subsequent to the presentation of election petition, as that of a plaint in a civil suit. The dismissal order dated 13-4-2007 is self-explanatory, therefore, there is no ground to allow the recall application.

For the reasons aforesaid, the recall application is devoid of merit and is liable to be dismissed.

The recall application is hereby dismissed.

(B.S. Verma,J.)

RCP